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# TREATISE,

Shewing

## That the Soveraignes Person is required in the great Councells or Assemblies of the State, as well at the Consul- tations as at the Conclusions.

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*Written by Sir ROBERT COTTON,  
Knight and Baronet.*

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Printed in the Yeare 1641.

# THE TREATISE

Spelling

THE USE OF SPELLING

BY JOHN LEWIS DUNNINGTON THE DIRECTOR

CONCERNING THE USE OF THE

SPRING, AS WELL AS THE COUNTRY

SEASIDE, AS WELL AS THE

CONTINENTAL COUNTRIES.

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BY JOHN LEWIS DUNNINGTON

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The right VVor-  
shipfull Sir ROBERT  
COTTON, Knight and Ba-  
ronnet his Speech in  
Parliament.

*That the Soveraignes person is required in the  
great Councells or Assemblies of the State,  
as well at the Consultations, as at the Con-  
clusions.*



Ince <sup>of</sup> these Assemblies few  
Diaries or exact Journall  
Books are remaining, and  
those but of late, and neglig-  
ently entred the Acts and  
Ordinances only reported to  
posteritie are the Rolls.

This Question (thought cleare) in generall  
A. 2 reason

reason and conveniencie must be wrought out of, for the particular out of such incident proofes, as the Monument of Storie and Records by pieces learne us. And to deduce it the clearer downe, some essentiall circumstances of Name, Time, Place, occasion, and Persons must be in generall shortly touched before the force of particular proofes be layd downe.

This noble body of the State (now called the houses in Parliament) is knowne in severall ages by severall names.

*Ex Concilis Reg. Saxon. Cantuar.*  
*Glani. Lib. Ely. Leges Ethel- duci regis.*  
*Ingulphus Cray- tundenis.*  
*Regis fr. Monast.*  
*Palat. Regale Welfmonast.*

*Concilia*, the Councells in the Eldest times, afterwards *Magnum, communione generale Concilium*, *Curia magna Capitulis et curia Regis*: Sometimes *Generale placitum*, and sometimes *Synodus*, and *Synodalia decretal*, although as well the causes of the Common wealth as Church were there decided.

The name of Parliament (except in the Abbots Chapters) was never heard of unto the reigne of King *John*, and then but rarely.

At the Kings Court were these Conventions usually, and the Presence, Privie Chamber, and other room convenient for the Kings in former times, (as now) then used: For what is the present house of Lords, but so at this day ? and was before the firing of the Palace at ~~Westminster~~ about 17.4.8. who then and there resided,

Improbable it is to beleive the King excluded his owne privie, and unmannerly it is for guests to barre him their companie, who gave to them their entertainment. It

It was now at first (as now) *Edicta Principis, Regis. Elensis.*  
at the Kings pleasure,

Towards the end of the Saxon, and in the <sup>smallest Ma-</sup>  
first time of the Norman Kings it stood in *Cu-*  
*stome-Grace, to Easter, Whitsun-side, and*  
*Christmas fixed: the Bishops, Earles, and Lords*  
*(as were) then assembled: So are the frequent*  
words in all the Annals: The King of course  
invested with his Imperiall Crownes by the Bi-  
shops, and the Peeres assembling, in *Liber de Bello.*  
*Recit. Wig-*  
*nifice.*  
Recognition of their preoblige faith and present  
duty and service; untill the unsafe time of King  
John (by over-potent and popular Lords) gave  
discontinuance to this constant grace of Kings,  
and then it returned to the uncertaine pleasure  
of the Sovereigne Gummens,

The causes then (as now) of such assemblies,  
were provision for the support of the State in  
Men and Money, & well ordering of the Church  
and Common-wealth, and determining of such  
causes, which ordinary Courts *negligentia in-*  
*capere, (as Glanvill the grand Judge under H. 2.*  
*which) Where the presence of the King was still*  
required, it being otherwise absurd to make the  
King assessor to the judgements of Parliament,  
and afford him no part of the Consideration.

The necessity hereof is well and fully deduced unto us in a reverend Monument not farre  
from that grave Mans time, in these words, *Rex*  
*senatur omnimodo personaliter inter eis Parlia- Modus rendendi*  
*mento, nisi per corporalem agitudinem defi- Parliament.*

ture, and then to acquaint the Parliament of such occasion by severall Members of either House. *Causa est quod solebat clamor et rumor esse pro absentia Regis, quare damnosa & periculosa est est toti Communilitati, Parlamento, & Regno, cum Rex a Parlamento absens fuerit: Nec se absente debet, nec potest, nisi duntaxat in causa supradicta.*

By this appears the desire of the State to have the Kings presence in these great Councells by expresse necessitie.

I will now endeavour to lead the practise of it from the darke and eldest times to these no lesse neglected of ours.

From the yeare 720. to neare 920. during all the Heptarchy, in all the Councell remaining composed *ex Episcopis, Abbatibus, Duibib, Satrapis, et omni dignitate optimatibus, ecclesiasticis scilicet & secularibus personis pro utilitate Ecclesie & stabilitate Regni pertractatim.* Seven of them are *Rege presidente*, and but one by deputy; and incongruous it were, and almost Non-sence, to barre his presence that is President of such an Assembly.

The Saxon Monarchy under *Alfred, Etheldred, Edgar* in their Synods, or placita generalia, went in the same practise, and since. Thus *Ethelwold* appealed Earle *Leofric* from the *Countie ad generale placitum*, before King *Etheldred* and *Edgar* the Queen, against Earle *Godfrid* *Eldred* the King at *London*, congregatis *Principibus & sapientibus Angliae.* In

*Ex registr. Concilior. Gentiar. Ex Concilio Wimbrethi R.*

*Ex Synodis & legibus Alfredi, Etheldredi, Edgar.*

*Ex Registr. Abingdon.*

In the yeare 1052. under Edward the Con- Gesta St. Edr.  
Gallie.  
fessor, statutum est placitum, magnum extra Lon-  
dinum, quod Normanni (ex Francorum consuetu-  
dine) Parliamentum appellant, where the King  
and all his Barons appealed: Godwin for his bro-  
ther Alreda death, the Earle denied it, and the  
King replied thus, *My Lords, you that are my*  
*Liege men, Earles and Barons of the Land here as-*  
*sembled together, have heard my appeale, and his an-*  
*swer: unto you be it left to doe right betwixt us.*

At the great Councell at Westminister, 1072. in Registr. Can-  
tuar.  
Easter week the cause of the two Arch-Bishops  
*Lanfrank, and Thomas, ventilata in presentis*  
*Regis Gulielmi, and after at Windsor, sicut acce-*  
*pit in presentis Regis.*

At the same Feast, Anno 1081. (the usuall  
time of such assemblies) the King, the Arch-Bis-  
hops, Bishops, Abbots, Earles, and chiefe No-  
bilitie of the Kingdome were present: for so are  
the words of the Record.

The cause betweene *Arfaet Bishop of Normay,* Registrum San-  
cti Eduardi.  
and *Baldwin Abbot of Burie,* was also argued,  
*Et ventilata in publico Rex jubet, tenet iudi-  
cium, causis auditis amborum.*

The diligence of his sonne (the learned H.I.)  
in executing of this part of his kingly function,  
is commended to posteritie by *Walter Maps* (a  
learned man, traiped up, and dear in favour with  
H.I.) in these words: *Omnia Regali more, decen-  
sique moderamine faciebat, neminem volebat egere  
iustitia, vel pace: constituerat autem ad tranqui-  
litatem*

*Walterus  
Maps de Kuz  
gis Causa.*

titutem omnium, ut diebus vacationis, vel in Do-  
mo magna sub dio copiam sibi saceret usque ad ho-  
rum sextum, (which was till 12, as weenow ac-  
count) secum habens Comites, Barones, Proceres,  
et vasavores, to heare and determine causes,  
whereby he attained the fir-name of *Lea Inſtitie*  
in all Stories, and so out went) in quiet quid-  
dance of the ſtate) his beſt Progenitors.

*Vita Tho. Ca-  
ruaris, &c.  
Fit. Stephan.*

*Cefas H. 2.  
Benedic. Ab-  
bati Authe.*

*Reg. Monas.  
de Bello.*

The next of his name that ſucceeded, is re-  
membr'd every where for the debates and di-  
putes he heard in perfon with *Thomas* the Arch-  
bishop, and others of his part at the greatest  
Councils, both at *London*, *Clarendon*, and *North-  
ampton* for the redrefle of the many complaints  
of the Commons againſt out-rages, and extor-  
tions of Clergymen.

In the yeare 1057. die Pentecost. Apud *St.*  
*Edmundum*: The ſame King (*diadema inſigni-  
tus*) with the Bifhops, Abbots, Earles, and Ba-  
rons of the Kingdome late dayly himſelfe and  
heard all the debates concerning the liberties &  
Charters of *Batell Abbie*. The interlocutrie  
ſpeeches as well of the King as the Lords and  
parties are at full related in a Register of the  
Church.

*Reg. Lincolni-  
ciſt.*

The fit between the Church of *Lincolne* and  
*S. Albans in præſentia Regis H. Archiepiscoporum,  
Episcoporum omnium Angliae & comitatum &  
Baronum Regni*, was at *Westmin*. debated and en-  
ded: and had the love of Memorie and Truth bin  
a Protector to the publick Records of the ſtate,

as the awe of the Clergies censure was a guard to theirs in tempestuous times, we had not been now left to the onely friendship of Monkes diligence for example in this kinde.

At Lincolne the Arch-Bishop, some Bishops, but all the Earles and Barons of the Kingdome, *una cum Rege Joanne congregati ad colloquium de concordia Regis Scotie,* (saith a Register of that Church.)

*Liber. Burros.  
Monaster.*

This use under King H. 3. needeth no further proofe than the Writ of Summons, then (as some report) framed, expressing both the Kings mind and practice.

It is *Nobiscum & Prelatis, & Magnatibus no-* *stris quos vocari fecimus super premissis tractare,* *& Concilium impendere :* which word *Nobis-* *cum* implyeth plainly the Kings presence. *Rot. clav. 4.  
39. H. 3.*

What the succeeding practice was from the 15. year of E. 4. the proper Records of this Inquierie, (the Journall books being lost) I am inforced to draw from out the Rolls of Acts wherein sometimes by chance they are remembred.

Edward the 2. was present in Parliament the *Rot. Parl. 15.]* 15. yeare of his reigne, at the complaint against *E. 3.* the *Spencers,* and at a second Parliament that year for the repeale of their banishment.

In the 4. of E. 3. the King was present at the *Rot. Parl. 4.* Accusation of *Roger Mortimer,* but not the Trial, and the next yeare in the treaty of the *French affaires,* *E. 3.* *Rot. Parl.* *5. E. 3.*

In the 6. yeare, *Intererat rex in causa Iohannis de Gray & Guilielmi de la Zouch* : and the same yeare 2. die Parliamenti, the King was present at the debate about his voyage into *Scotland*.

In the 15. yeare the King in the Painted Chamber sitting with the Lords in consultation, the Arch-Bishop after pardon, prayes that for better clearing himselfe, hee may be tryed in full Parliament, which was granted.

*Rot. Parl.  
15. E. 3.*

*Rot. Parl.  
17. E. 3.*

*Chronicon Hen-  
rici Knighton.*

*Rot. Parl. 3.  
H. 4.*

In the 17. in *camera alba* (now called the Court of Requests) *Rex cum magnatibus conve- niunt communis super negotiis Regni.*

In the 10. of R. 2. the King departed from the Parliament in some discontent, when after some time, Lords are sent to pray his presence, and to informe his Majestie, that if hee forbeare his presence amongst them 40. dayes, that then *ex antiquo Statuto*, they may returne *absque domi- nigerio Regis*, to their severall homes.

Henrie the 4. began his first Parliament the first of November, and was the 27. day of the same moneth at a debate about the Duke of Britanie: the 30. day the cause of the Arch-Bishop was before him proposed onely.

The 3. of Nov. he was at the debate whether the Commons had right of *Indicature*, yea, or no.

On the 10. hee was with the Lords in their Consultation about the expedition against the *Scots*, the creation of the Duke of *Lancaster*, and the prohibition of a new Sect from entring this Kingdome. Some Ordinances were at this time

time consulted of concerning the staple, and the sentence against *Haxey* after dispute revoked.

This King began his second Parliament the 20 of Ianuarie, and on the 9. of Februarie was present to make agreement betwixt the Bishop of *Norwich*, and *Thomas of Erpingham*.

*Rot. Parl. 2.  
H. 4.*

On the 20. day of the same moneth, hee was present at Councell for repressing of the *Welch* Rebels, for revocations of stipends, and concerning the *Priors Aliens*.

On the 26. they advise before the King of the *Sextertian* Order.

On the 2. of March of the Statute of *Provisions*, the keeper of the privie Seale, and relieving of the two Universities.

On the 9. of March they mediate before the King a reconciliation betwixt the Earle of *Bedford*, and the *Lord Fitzwaters*.

*Rot. Parl. 4.  
H. 4.*

He also began a parliament in his fifth yeare, upon the 15. of Ianuarie, and the 10. they advise before the King, of guarding of the Seas, and the *Welch* Rebellion.

On the 8. of Februarie, the Earle of *Northumberland* is charged before the King, and in his presence, and by his permission, divers of whom hee knew no harme were removed from the Court.

The next day at the petition of the Commons, hee tooke upon him to reconcile the Earles of *Northumberland & Westmerland*, and on the 22. of Februarie of *Northumberland* and *Dunbar*.

*Roll. Parl.*  
27. H. 6.

In a parliament of the 27. of H. 6. a challenge of Seat in parliament betwixt the Earles of *A-*  
*rundell* and *Devonshire* was examined and ap-  
poynted by the K. with the advice of the Lords.

In that great capitall cause of the Duke of *Suffolke*, 28. H. 6. I find not the King once pre-  
sent at the debates, but the Duke appealing  
from his tryall by Peereage to the K. is brought  
from out the house of Lords to a private cham-  
ber, where the King ( after the Chancellor in  
grosse had declared his offence, and refusall) him-  
selfe ( but not in place of judgement) adjudged  
his banishment.

*Roll. Parl.*  
E. 4.

*Recept. Croy-  
landense.*

By the Rolls of K. Ed. 4. it appeareth that hee  
was many dayes ( befides the first and last ) in  
parliament, and there are entred some Speeches  
by him uttered, but that of all the rest is most of  
marke, the Reporter then present tells it thus,  
of the Duke of *Florence*, and the King, *Trifis*  
*disceptatio inter duos tant & humanitatis Germani-  
nos : Nemo arguit contra Duxem nisi Rex, nemo  
respondit Regi nisi Dux.* Some other testimonies  
were brought in; with which the Lords were sa-  
tisfied, and so *formarunt in eum sententiam dam-  
nationis*, by the mouth of the Duke of *Buck-  
ham* ( then Steward of *England*: ) All which was  
much distasted by the house of Commons.

*Ex cariis Par-  
lamenti, 12. H. 7.*

The reigne of H. 7. affords upon the Rolls  
no one example ( the journall Books being lost )  
except so much as preserves the passages of eight  
dayes, in the 12. of his reigne, in which the King  
was

was some dayes present at debates, and with his owne hand the 31. day of the parliament delivered in a Bill of Trade there read: but had the Memoriall remained, it is no doubt but hee would have beeene found as frequent in his great Councell of Parliament, as hee was in the *Starre-Chamber*; where by the Register of that Court appeareth, aswell in debate at private causes, that touch neither life nor member, as those of publick care, he everie yeare of all his reigne was often present.

*Ex regist. Cambr.  
Ex Statute.*

Of H. 8. memorie hath not beene curious; but if he were not often present, peradventure that may be the cause of the disorder, which the learned Recorder Fleetwood in his preface to the Annals of E. the 5. R. 3 H. 7. & H. 8. hath obserued in the Statutes made in that Kings dayes: for which cause hee hath severed their *Index* from the former; and much lay in the will of *Wolsey*, who was ever unwilling to let that King see with his owne eyes.

*Ex Annalib.  
Fleetwood, Rec-  
ordari London.*

*Edward* the sixt in respect of his yong yeares may be well excused; but that such was his purpose appears by a memoriall of his owne hand, who proposing the affaires of Councell to severall persons, reserved those of greatest weight to his owne presence, in these words: These to attend the matters of State, that I will sit with them once a weeke to heare the debating of things of most importance.

Vnfaulnesse by Sexe in his two succeeding Sisters

Sisters to be so frequently present as their former Ancestors led in the ill occasion of such opinion and practise.

*Most Excellent Majestie :*

YOur most humble servant, in discharge of Obedience and Zeale hath hastned up this Abstract, which in all humilitie he offers up unto your gracious pardon. Presumption to enter the closet of your Counsell is farre from his modestie and dutie. What hath been your powerfull command, he hath made his worke; what is fit to be done with it is onely your divine judgement: He dares not say, that Presidents are War-rants: To direct the successe is as worthy obseruation as the knowledge thereof, sometimes have made ill examples by extention of Regall power through ill councells, with ill successe. Some as bad, or worse, when the people have had too much of that, and the King too little, the danger no lesse. To cut out of either of these paternes to follow were but to bee in love with the mischiefe for the example. The dearer I present this to your Highnesse, the nearer I approach the uprightnesse of your heart, / the bles-sed fortune of your happy subjects.

Pardon (most sacred Majestie) that I offer up to your admired wisedome my weake, but duti-full observations out of all the former ga-thering.

In Consultations of State, and decisions of private

private plaints it is cleare from all times, the King was not onely present to advice and heare, but to determine also.

In the cases Criminally, and noe of blood to barre the King apart were to seclude him the Star-Chamber (as far from reason as example :) The doubt is then aloud in crimes meer capitall.

I dare not too much commend the times that left these Parernes, either for the causes or effects, but wish the one and the other never more.

To proceed by publick Act of Commons, Peeres, and King, was most usefull: Appeals are gone by the Law of *Henry the fourth*. Of this now in debate, the way I feare is yet obscure. As great advise of State is as needfull for the manner, as for the Justice.

The example in the cause of the Duke of *Suffolk*, 28. H. 6. where the King gave judgement, was protested against by the Lords.

That of the Duke of *Clarence*, 6. E. 4. where the Lords, and the High Steward (the Duke of *Buckingham*) gave judgement, was protested against by the House of Commons. In both of these the King was somerimes present; but which of these may suit these times I dare not ghesse.

That of 1. R. 2. of *Gomenys* and *Weston* accused by the Commons plaint for Treason was tryed by the Lords in absence of the King, but sentenced by the Lord *Scroop* Steward for the King: The Accused were of the ranke of the Accusers, Commons, and not Lords.

How

How this will make a president to judge in  
causes Capitall a peere of Parliament, I cannot  
tell, but I should conceive a way answerable as  
well to Parliament as other Courts, so  
If the King and the Lords were Traytors,  
and the common Assentors to the Iudgement, to  
heare together the charge and evidence, the  
Lords (as doth the Iurie in other Courts) to  
withdraw, to find the verdict, and then the Stew-  
ard for the K. to pronounce the sentence; it pas-  
seth so by way of Act: a course that carryeth  
with it no exception, and likely to avoyd all cu-  
tious Questions of your Highnesse presence  
there.

If your humble Servant hath in this expression  
of his desire to doe you service, presumed  
too farre, his comfort is, that where Zeale  
of Dutie hath made a fault, Benignitie of  
Goodnesse will grant the pardon.

F J N J S.

